

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Virgin Islands Telephone Corporation Emergency)	WC Docket No. 08-236
Petition for Waiver of Sections 32.2000(g)(2)(ii))	
and 36.621 of the Commission's Rules)	
)	
)	

ORDER

Adopted: May 29, 2009**Released: May 29, 2009**

By the Acting Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this order, we deny a request from the Virgin Islands Telephone Corporation (Vitelco) for a waiver of sections 32.2000(g)(2)(ii) and 36.621 of the Commission's rules.¹ Vitelco requested a waiver that would address these rules' effect on Vitelco's receipt of universal service high-cost loop support.² We find that Vitelco has not demonstrated that good cause warrants waiver of these rules to allow it to receive additional high-cost loop support beyond what it and other similarly-situated companies are entitled to receive under the Commission's universal service high-cost support rules.

II. BACKGROUND

2. Part 32 of the Commission's rules sets forth the Uniform System of Accounts (USOA) for telecommunications companies.³ Incumbent local exchange carriers (LECs) are required to use the USOA to maintain their financial accounting records in a consistent and stable manner that adheres to the "well established body of accounting theories and principles commonly referred to as generally accepted accounting principles."⁴ The USOA, at section 32.2000(g)(2)(ii), requires incumbent LECs to compute depreciation rates based on the difference between the net book cost of a class or subclass of plant and its estimated net salvage value during the known or estimated remaining service life of the plant.⁵

¹ See Virgin Islands Telephone Corporation Emergency Petition for Waiver of Sections 32.2000(g)(2)(ii) and 36.621 of the Commission's Rules, WC Docket No. 08-236 (filed Nov. 19, 2008) (Petition); 47 C.F.R. §§ 32.2000(g)(2)(ii) and 36.621. Vitelco is the incumbent local exchange carrier providing service to the U.S. Virgin Islands. Vitelco currently provides telecommunications services to approximately 65,000 access lines. See Universal Service Fund, 2008 Submission of 2007 Data Collection Study Results, National Exchange Carrier Association (Sept. 30, 2008).

² Petition at 1.

³ 47 C.F.R. Part 32.

⁴ 47 C.F.R. § 32.1.

⁵ 47 C.F.R. § 32.2000(g)(2)(ii). The net salvage value commonly refers to the salvage value, i.e., the amount received for property retired, if sold (47 C.F.R. § 32.9000, Glossary of terms) minus the cost of removal, i.e., the cost of demolishing, removing, or otherwise disposing of telecommunications plant and recovering the salvage (47 C.F.R. § 32.9000, Glossary of terms). See Petition at 4.

3. Part 36 Subpart F of the Commission's rules sets forth the procedures for determining universal service high-cost loop support for rural incumbent LECs.⁶ Section 36.621 of the Commission's rules sets forth requirements for, among other things, the treatment of plant, accumulated depreciation, and depreciation expense for the purposes of computing universal service high-cost loop support.⁷ A rural carrier's high-cost loop support is based on the difference between the incumbent LEC's average cost per loop and the nationwide average cost per loop, as limited by an indexed cap.⁸ Once an incumbent LEC's cost per loop exceeds the threshold for support, support increases as its cost per loop increases and conversely as its cost per loop decreases, support will decrease.⁹

4. On November 19, 2008, Vitelco requested an emergency waiver of the Commission's accounting and universal service rules to the extent necessary to address "the unique circumstances of the Virgin Islands, including the recent devastation inflicted by Hurricane Omar, and the unintended negative impact of [Commission] rules on Vitelco's high-cost loop support."¹⁰ On December 8, 2008, the Wireline Competition Bureau (Bureau) released a public notice seeking comment on Vitelco's petition.¹¹ Vitelco also requested that the Commission direct the Universal Service Administrative Company (USAC) to hold in abeyance until February 28, 2009, any reduction in high-cost loop support payments to Vitelco while the Commission considers Vitelco's petition.¹² On November 28, 2008, the Bureau instructed USAC to hold in abeyance until February 28, 2009, any adjustments in universal service high-cost loop support for Vitelco.¹³ The Bureau limited the abeyance to any adjustments in Vitelco's high-cost loop support payments related to the impact of the Commission's rules addressed in Vitelco's petition.¹⁴ On February 27, 2009, the Bureau directed USAC to continue the abeyance until May 31, 2009, pending further action on Vitelco's petition.¹⁵

5. Vitelco's petition states that Hurricane Omar, which struck the U.S. Virgin Islands on October 16, 2008, caused massive damage to Vitelco's wireline infrastructure that must be repaired or replaced at significant cost.¹⁶ Although it has insurance, Vitelco estimates that the damage sustained will result in a \$2.5 million funding requirement relating to the deductible portion of its insurance coverage.¹⁷ Vitelco further states that the financial impact of Hurricane Omar is further exacerbated by Vitelco's already strained finances caused by: 1) the Chapter 11 bankruptcy proceedings of Vitelco's corporate

⁶ 47 C.F.R. Part 36, Subpart F – Universal Service Fund.

⁷ 47 C.F.R. § 36.621.

⁸ See 47 C.F.R. §§ 36.622, 36.601(c).

⁹ See 47 C.F.R. § 36.631.

¹⁰ See Petition at 1.

¹¹ See *Comment Sought on Virgin Islands Telephone Corporation Petition for Waiver of Accounting and High-Cost Universal Service Support Rules*, WC Docket No. 08-326, Public Notice, 23 FCC Rcd 17830 (Wireline Comp. Bur. 2008). No comments were filed.

¹² See Petition at 1.

¹³ See Letter from Dana R. Shaffer, Chief, Wireline Competition Bureau, to Scott Barash, Universal Service Administrative Company, WC Docket No. 08-236, 23 FCC Rcd 17119 (Wireline Comp. Bur. 2008).

¹⁴ *Id.*

¹⁵ See Letter from Julie A. Veach, Deputy Chief, Wireline Competition Bureau, to Scott Barash, Universal Service Administrative Company, WC Docket No. 08-236, 24 FCC Rcd 2869 (Wireline Comp. Bur. 2009).

¹⁶ See Petition at 2.

¹⁷ *Id.*

parent, Innovative Communications Corporation, and the related sale of assets, including Vitelco; 2) the on-going challenge of cash flow management due to demand on resources to correct past operational and financial management practices; and 3) Vitelco incurring extraordinary expenses related to the statutorily-mandated earnings investigation being conducted by the U.S. Virgin Islands Public Service Commission.¹⁸ Vitelco argues that application of the Commission's universal service high-cost loop support and accounting rules will result in a large and unintended financial burden on Vitelco by reducing Vitelco's high-cost loop support.¹⁹ Vitelco states that the reduced support is a result of its estimated high plant removal costs and its relatively low plant investment over the last several years.²⁰

6. The relief Vitelco specifically seeks is a waiver of sections 32.2000(g)(2)(ii) and 36.621 of the Commission's rules to eliminate the requirement that net salvage value be included in calculating depreciation rates.²¹ According to the petition, much of Vitelco's cable and wire facilities (C&WF) have remained in service beyond their anticipated service lives and, consequently, the value of Vitelco's C&WF plant investment is less than the related accumulated depreciation (which includes the net salvage value).²² This results in a negative value for Vitelco's C&WF net plant balance, which produces a negative C&WF return on investment for purposes of calculating high-cost loop support.²³ As a result, Vitelco's average cost per loop for high-cost loop support purposes is reduced. Vitelco claims that the inclusion of the net salvage component results in a reduction of its 2008 high-cost loop support of approximately \$1.448 million.²⁴ According to Vitelco, "this outcome is not appropriate because the negative net plant balance is not the result of an over-recovery on invested capital, but is the result of the incorporation of a net salvage component in depreciation rates as required under FCC regulations."²⁵ Vitelco argues that the Commission has recognized in other contexts that incorporation of a net salvage component can have unintended consequences.²⁶ Vitelco relies on the Commission's 2000 *Pole Attachment Order*, in which the Commission recognized that the use of a net salvage component for LECs in the pole investment portion of the pole attachment formula for cable operators could result in negative or unusually low pole attachment rates.²⁷

¹⁸ See *id.* at 2-3.

¹⁹ See *id.* at 3.

²⁰ See *id.*

²¹ See *id.* at 3-4.

²² See *id.*

²³ See *id.* at 5. The accumulated depreciation balance includes both the depreciation attributable to C&WF investment and depreciation attributable to removal costs; however, the C&WF plant account does not include the removal costs. See 47 C.F.R. § 32.2410. Therefore, when the plant is fully depreciated, the accumulated depreciation balance may exceed the gross plant balance leading to a negative net plant balance.

²⁴ See Petition at 6, note 3.

²⁵ See *id.* at 6.

²⁶ See *id.*

²⁷ See *id.* at 6 (citing *Amendment of Rules and Policies Governing Pole Attachments*, CS Docket No. 97-98, Report and Order, 15 FCC Rcd 6453, 6487, para. 64 (2000) (*Pole Attachment Order*)).

III. DISCUSSION

7. We find that Vitelco has not demonstrated that good cause exists to warrant waiver of sections 32.2000(g)(2)(ii) and 36.621 of the Commission's rules, and we therefore deny Vitelco's request.²⁸

8. The relief Vitelco is seeking, i.e., waiver of the Commission's rules regarding the accounting for net salvage value and the calculation of high-cost loop support, is unrelated to its financial troubles caused by Hurricane Omar, Vitelco's parent company's bankruptcy, and general past mismanagement.²⁹ The reduction in Vitelco's high-cost loop support is due to the fact that Vitelco's C&WF plant is fully depreciated and Vitelco has failed to invest in new facilities. Vitelco has not provided any persuasive evidence that granting it a waiver to provide it with additional universal service high-cost loop support would serve the public interest. Vitelco has not demonstrated that good cause exists to support deviating from the Commission's long-established USOA and from generally accepted accounting principles to provide Vitelco with additional high-cost loop support to compensate it for expenses other than actual loop-related investment.³⁰ Vitelco will be eligible for additional high-cost loop support pursuant to the Commission's rules after investing in its C&WF plant.³¹ Further, due to the operation of the indexed cap on high-cost loop support, granting Vitelco's waiver request and increasing its high-cost loop support would necessarily reduce the amount of high-cost loop support that other incumbent LECs would receive.³² Although Vitelco's high-cost loop support declined from 2008 to 2009, we note that Vitelco's interstate common line support is projected to increase approximately 13 percent, from \$11 million to a projected \$12.4 million, during the same period.³³

²⁸ Generally, the Commission may waive its rules for good cause shown. See 47 C.F.R. § 1.3. The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. See *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*). In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. See *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972); *Northeast Cellular*, 897 F.2d at 1166. Waiver of the Commission's rules is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest. *Northeast Cellular*, 897 F.2d at 1166.

²⁹ See Petition at 2-3. According to press reports, there are also ongoing court proceedings involving a principal owner of Vitelco's parent company, Innovative Communications Corp., alleging misuse of funds. See St. Thomas Source, *Court Documents: Prosser Owes ICC More Than \$156 million*, <http://www.onepaper.com/stthomasvi/?v=d&i=s&s=News:Local&p=1223612350> (Nov. 21, 2008).

³⁰ Vitelco received \$8.8 million in high-cost loop support during 2008 and is projected to receive approximately \$5.2 million during 2009. See <http://www.usac.org/hc/tools/disbursements/default.aspx> (USAC Disbursement Website); Universal Service Administrative Company, Federal Universal Service Support Mechanism, Fund Size Projection for the Second Quarter 2009, Table HC05 (Jan. 30, 2009) (USAC Second Quarter 2009 Projection). Vitelco's reduction in high-cost loop support is partially due to the operation of the indexed cap on nationwide high-cost loop support. See 47 C.F.R. § 36.603(a). The operation of the indexed cap required an increase in the national average cost per loop from 2008 to 2009 of \$363 to \$383, respectively, and all incumbent LEC support was reduced as a result. We estimate that approximately one-third or \$1.1 million of Vitelco's reduced support from 2008 to 2009 is a direct result of the increase in the national average cost per loop.

³¹ Vitelco's costs incurred during 2008 and thereafter for the repair or replacement of plant as a result of damage inflicted by Hurricane Omar will be eligible for universal service support pursuant to the Commission's rules.

³² See 47 C.F.R. § 36.603(a).

³³ See *supra* note 30; USAC Disbursement Website; USAC Second Quarter 2009 Projection at Table HC09.

9. In the USOA, the Commission requires telecommunications carriers to use generally accepted accounting principles in their accounting treatment of accumulated depreciation, depreciation expense, and net salvage value.³⁴ These accounting principles were designed to reflect and report stable, recurring, and consistent financial data. Vitelco has not demonstrated good cause to allow it to deviate from the Commission's accounting rules and generally accepted accounting principles because of its negative C&WF plant balance.³⁵ Further, such a deviation would be contrary to the Commission's general principle that accounting and financial reporting systems should reflect consistent accounting methodologies over time.³⁶

10. In addition, Vitelco's characterization of the Commission rules having an *unintended* negative result on Vitelco's high-cost loop support is incorrect.³⁷ The high-cost loop support rules are designed and *intended* to encourage carriers to invest in and maintain loop plant to ensure that all consumers have access to quality and advanced telecommunications services at affordable rates.³⁸ An incumbent LEC's failure to invest in and maintain its C&WF plant results in reduced high-cost loop support.³⁹ While Vitelco's negative C&WF plant balance is partially due to the estimated high cost of plant removal, the primary contributing factor to Vitelco's negative C&WF plant balance is its failure to invest in its telecommunications C&WF plant in recent years.⁴⁰ Further, Vitelco's high plant removal costs have been included in Vitelco's depreciation expense in prior years during the course of the plant's expected life, and this depreciation expense was included in Vitelco's prior years' high-cost loop support calculations. Therefore, Vitelco has already recovered a portion of these high plant removal costs through prior high-cost loop support payments it has received.

11. Vitelco's reliance on the Commission's 2000 decision regarding the exclusion of net salvage value in the computation of maximum pole attachment rates is not relevant to the instant proceeding. In the *Pole Attachment Order*, the Commission, among other things, revised the formula for calculating net pole investment for purposes of determining maximum pole attachment rates.⁴¹ In that proceeding, LEC pole owners asserted that because pole removal costs typically exceed gross salvage proceeds by a wide margin, negative net salvage values and, consequently, negative or unusually low pole attachment rates may occur late in a pole's useful life.⁴² To remedy this problem, the Commission

³⁴ See *supra* para. 2.

³⁵ Negative plant balances are not an uncommon occurrence. In 2007 there were seven incumbent LECs that had negative C&WF plant balances. See Universal Service Fund, 2008 Submission of 2007 Data Collection Study Results by the National Exchange Carrier Association, Inc. (filed Sept. 30, 2008). None of these incumbent LECs requested or received a waiver of the Commission's rules to allow them to increase the amount of their high-cost loop support.

³⁶ 47 C.F.R. § 32.1.

³⁷ See Petition at 3.

³⁸ See 47 U.S.C. § 254(b).

³⁹ As discussed above, the amount of high-cost loop support a rural incumbent LEC receives is dependent on the degree to which its average annual cost per loop exceeds the national average cost per loop. See *supra* para. 3; 47 C.F.R. Part 36, Subpart F.

⁴⁰ See Petition at 5.

⁴¹ See *Pole Attachment Order*, 15 FCC Rcd at 6455, para. 1 n.3. The term "pole attachment" is defined as any attachment by a cable television system or provider of telecommunications service to a pole, duct, conduit, or right-of-way owned or controlled by a utility. 47 U.S.C. § 224(a)(4).

⁴² See *Pole Attachment Order*, 15 FCC Rcd at 6487, para. 64.

excluded pole removal costs from accumulated depreciation only in the context of determining maximum pole attachment rates.⁴³ The Commission distinguished poles from other telecommunications assets, stating that negative net pole valuations due to significant pole removal costs are atypical results, and, for most telecommunications asset classes, removal costs represent a small percentage of gross investment.⁴⁴ Although the Commission revised the net pole investment formula by excluding pole removal costs for purposes of calculating reasonable maximum pole attachment rates, it did not otherwise change the accounting treatment of poles or net salvage value in Part 32 of the Commission's rules.

12. As stated above, the Bureau directed USAC to hold in abeyance any reductions in high-cost loop support pending resolution of Vitelco's petition.⁴⁵ Consistent with the denial of Vitelco's petition for waiver, USAC must adjust Vitelco's universal service high-cost loop support payments to recover the difference between the support amount paid during the six-month abeyance period and the high-cost loop support amount to which Vitelco is entitled under the Commission's rules. Given the financial hardships which Vitelco is currently facing, we find that it would be unduly burdensome on Vitelco to immediately refund this support amount. Instead, we direct USAC to recover the required excess high-cost loop support disbursed to Vitelco during the abeyance period on a pro-rated basis over a one-year period beginning with the first full month after the release of this order (i.e., beginning in June 2009).

IV. ORDERING CLAUSES

13. ACCORDINGLY, IT IS ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and the authority delegated under sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, that the petition for waiver of sections 32.2000(g)(2)(ii) and 36.621 of the Commission's rules, 47 C.F.R. §§ 32.2000(g)(2)(ii) and 36.621, filed by the Virgin Islands Telephone Corporation on November 19, 2008, IS DENIED.

14. IT IS FURTHER ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and the authority delegated under sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, that the Universal Service Administrative Company IS REQUIRED to recover excess high-cost loop support disbursed to the Virgin Islands Telephone Corporation as described herein.

⁴³ *Id.* at 6489, paras. 69-70.

⁴⁴ *Id.* at 6488, para. 67.

⁴⁵ *See supra* para. 4.

15. IT IS FURTHER ORDERED that, pursuant to section 1.102(b)(1) of the Commission's rules, 47 C.F.R. § 1.102(b)(1), this order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Julie A. Veach
Acting Chief
Wireline Competition Bureau